

1 and petitioner replied (#28).

2 Petitioner filed his habeas petition on November 16, 2004. On
3 April 6, 2005, this court found that petitioner had failed to
4 exhaust his state court remedies with respect to his habeas
5 petition, and dismissed the case without prejudice (#12).

6 Petitioner and respondents subsequently requested that the court
7 reconsider its order (#13, 14). The court did so, and filed an
8 order on January 19, 2006, concluding that it had erred in its
9 previous finding, and that petitioner had in fact "fairly
10 present[ed]" his federal claim to the state courts (#15).

11 Specifically, the court found that petitioner cited adequately to
12 the Due Process Clause and the Fourteenth Amendment in his state
13 petition.

14 Petitioner relies on the Nevada Supreme Court case,
15 *Demosthenes v. Williams*, 637 P.2d 1203 (Nev. 1981), and the
16 language of the good time credit statute itself, Nev. Rev. Stat.
17 209.443(2), for the argument that his "good time" credits should be
18 applied to his life sentence. Specifically, petitioner cites to
19 part of the *Demosthenes* decision pointing out that Section 209.443
20 contains "no limiting language," and extends to "'each' and 'every'
21 offender." *Demosthenes*, 637 P.2d at 1204. The relevant provision
22 of the statute itself provides: "The credits earned by an offender
23 must be deducted from the maximum term imposed by the sentence and,
24 except as otherwise provided in subsection 5, must apply to
25 eligibility for parole."¹ Nev. Rev. Stat. 209.443(2). Petitioner
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27 ¹ Subsection 5, which is not relevant here, provides: "Credits earned pursuant to this section do not apply to
28 eligibility for parole if a statute specifies a minimum sentence which must be served before a person becomes eligible for
parole." Nev. Rev. Stat. 209.443(5).

1 thus argues that the legislature intended no exception to the
2 application of Section 209.443 to offenders in prison with life
3 sentences.

4 Before addressing the merits of petitioner's argument, the
5 court must first establish that petitioner's claim admits of review
6 in this court's habeas corpus jurisdiction. Under 28 U.S.C. §
7 2254, a district court may entertain a habeas corpus petition on
8 behalf of a prison inmate only when the grounds for the petition is
9 an alleged constitutional violation. Respondents contend that
10 because petitioner is challenging the application of a state
11 statute, his claim is outside the scope of federal habeas corpus
12 review. However, petitioner argues that Section 209.443 creates a
13 liberty interest under the Fourteenth Amendment, and by refusing to
14 apply good time credit to his term of imprisonment, the state is
15 abrogating his constitutional due process rights. His petition is
16 therefore properly before this court.

17 The Supreme Court has long held that "[t]here is no
18 constitutional or inherent right of a convicted person to be
19 conditionally released before the expiration of a valid sentence."
20 *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex*,
21 442 U.S. 1, 7 (1979). However, state statutes may independently
22 create a due process liberty interest. *Kentucky Dep't of*
23 *Corrections v. Thompson*, 490 U.S. 454, 461 (1989). Thus, in *Wolff*
24 *v. McDonnell*, the Court held that while the constitution itself
25 "does not guarantee good-time credit for satisfactory behavior
26 while in prison," the Nebraska statute that created the right to
27 good time credit in that case implicated Fourteenth Amendment
28 liberty interests when the state threatened to deprive it without

1 the proper procedures. *Wolff v. McDonnell*, 418 U.S. 539, 557
2 (1973). To determine whether a state statute creates a protectable
3 due process guarantee, the court must look to the structure and
4 language of the statute, as well as the state court's
5 interpretation of the scope of the interest. *Bergen v. Spaulding*,
6 881 F.2d 719, 721 (9th Cir. 1989).

7 Here, petitioner's due process claim fails because he has no
8 liberty interest in the application of his good time credits to his
9 life sentence. The Nevada Supreme Court has held that "the
10 legislature did not intend good time credit to be applied to a
11 sentence of life in prison." *Hunt v. Warden*, 903 P.2d 826, 827
12 (Nev. 1995). The court reasoned that "[b]ecause appellant was
13 sentenced to a term of life in prison, there is no date from which
14 the credit can be deducted." *Id.* The language of the statute
15 itself identifies no due process guarantee for the application of
16 good time credits to life terms for prison inmates, nor can it
17 reasonably be read to imply such a guarantee. As the Nevada
18 Supreme Court indicated, "[a] statute should be construed in light
19 of the policy and the spirit of the law, and the interpretation
20 should avoid absurd results." *Id.* This court concludes,
21 therefore, that Nevada recognizes no liberty interest in Section
22 209.443 as it applies to prison inmates sentenced for life, and
23 consequently petitioner had no due process right that could have
24 been abrogated. Instead, petitioner's earned good time credits may
25 properly be applied to his parole eligibility, which is consistent
26 with the Nevada Supreme Court's holding in *Demosthenes v. Williams*,
27 to which the petitioner cites.

28 Petitioner's petition for habeas corpus (#1) is therefore

